

New Jersey Commissioner of Education

Decision

I.R., on behalf of minor child, J.R.,

Petitioner,

v.

Board of Education of the Township of
East Brunswick, Middlesex County,

Respondent.

Synopsis

Petitioner appealed two harassment, intimidation or bullying (HIB) determinations by the respondent Board involving her daughter, J.R., who was an eighth grader in the Board's school district at the time of the incidents. Specifically, the Board had determined: (1) that J.R. committed an act of HIB pursuant to New Jersey's Anti-Bullying Bill of Rights Act, *N.J.S.A. 18A:37-13.2 et seq*, when she created and disseminated a meme regarding the weight and appearance of another student, N.C.; and (2) that J.R. was not the victim of HIB by N.C. when N.C. started a fight with J.R. in retaliation. Petitioner contended that the HIB investigations into these matters were flawed, and sought, *inter alia*, to reverse both of the Board's HIB determinations involving her daughter.

The ALJ found, *inter alia*, that: regarding the first Board determination above, the record demonstrated that J.R. had made comments to N.C. about her weight, but the Board's decision was based solely on the incident regarding the meme; the Board's written decision contained misstatements, including that J.R. created the meme, while the investigation demonstrated that another student had created it; and the Board's decision indicated J.R. had admitted to showing the meme to other students in the school when there is no such admission in the record; regarding the second Board determination above, N.C. did not commit an act of HIB when she physically attacked J.R. because N.C.'s actions were not "reasonably perceived as being motivated either by any actual or perceived characteristic," as required under *N.J.S.A. 18A:37-14*. Accordingly, the ALJ affirmed the Board's determination that J.R. was not the victim of HIB but reversed the Board's decision that J.R. had committed an act of HIB.

Upon review, the Commissioner found that the record contains sufficient evidence to support the Board's finding of HIB, and concluded that it was not arbitrary, capricious, or unreasonable for the Board to have determined that J.R. committed HIB against N.C. Accordingly, the Initial Decision of the OAL was reversed in part and the Board's finding that J.R. committed an act of HIB was affirmed, while the Initial Decision was affirmed in part and the Board's finding that J.R. was not the victim of HIB was affirmed. The petition was dismissed.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

328-23
OAL Dkt. No. 17359-18
Agency Dkt. No. 265-10/18

New Jersey Commissioner of Education
Final Decision

I.R., on behalf of minor child, J.R.,

Petitioner,

v.

Board of Education of the Township of
East Brunswick, Middlesex County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by the East Brunswick Board of Education (Board) pursuant to *N.J.A.C.* 1:1-18.4 have been reviewed and considered. Petitioner did not file a reply to the Board's exceptions.

This matter involves two harassment, intimidation, and bullying (HIB) determinations made by the Board. First, the Board determined that J.R. committed an act of HIB when she created and disseminated a meme regarding the weight and appearance of another student, N.C. Second, the Board determined that J.R. was not the victim of HIB by N.C. when N.C. started a fight with J.R. in retaliation. Following a hearing, the Administrative Law Judge (ALJ) affirmed the Board's decision that J.R. was not the victim of HIB, finding that N.C.'s actions were not based on a distinguishing characteristic of J.R. The ALJ reversed the Board's decision that J.R. committed an act of HIB. The ALJ noted that although the record demonstrated that J.R.

had made comments to N.C. about her weight, the Board's decision was based solely on the incident regarding the meme. The ALJ found that the Board's written decision contained misstatements, including that J.R. created the meme, while the investigation demonstrated that another student had created it. Moreover, the Board's decision indicated J.R. had admitted to showing the meme to other students in the school when there is no such admission in the record. Because these factual inaccuracies did not support the Board's conclusion, the ALJ found that the decision was not entitled to a presumption of correctness and reversed the decision.

In its exceptions, the Board argues that even though the Board's decision erroneously states that J.R. created the meme, disseminating the meme is sufficient on its own for a finding of HIB against J.R. The Board also contends that the conduct reported by N.C. was not exclusive to the meme and extended to J.R.'s other comments about N.C.'s weight and appearance.

Upon review, the Commissioner finds that the record contains sufficient evidence to support the Board's finding of HIB. When a local board of education acts within its discretionary authority, its decision is entitled to a presumption of correctness and will not be disturbed unless there is an affirmative showing that the decision was "patently arbitrary, without rational basis or induced by improper motives." *Kopera v. W. Orange Bd. of Educ.*, 60 N.J. Super. 288, 294 (App. Div. 1960). Even if J.R. did not admit to disseminating the meme, N.C. did report during the investigation that she saw J.R. showing the meme to other students. The Commissioner concludes that it was not arbitrary, capricious, or unreasonable for the Board to find N.C.'s report credible, or for the Board to find that J.R.'s conduct in disseminating the meme met the statutory criteria for an act of HIB.

Additionally, the record is replete with J.R.'s admissions that she called N.C. "fat" on numerous occasions. These allegations were contained in the HIB complaint filed by N.C.'s parents, and they were addressed in the investigation report on which the Board's decision was based. J.R.'s insulting comments toward N.C. also meet the statutory criteria for an act of HIB.

Accordingly, the Initial Decision is reversed in part, and the Board's finding that J.R. committed an act of HIB is hereby affirmed. The Initial Decision is affirmed in part, and the Board's finding that J.R. was not the victim of an act of HIB is affirmed. The petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ANGELINA ALLEN McMILLAN, J.D.S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 2, 2023

Date of Mailing: November 3, 2023

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

I.R. ON BEHALF OF MINOR CHILD,

J.R.,

Petitioner,

v.

TOWNSHIP OF EAST BRUNSWICK BOARD

OF EDUCATION, MIDDLESEX COUNTY,

Respondent.

OAL DKT. NO. EDU 17359-18

AGENCY DKT. NO. 265-10/18

I.R., petitioner on behalf of minor child J.R., pro se

Frances L. Febres, Esq., for respondent (Cleary, Giacobbe, Alfieri, Jacobs, LLC,
attorneys)

Record Closed: July 11, 2022

Decided: August 18, 2023

BEFORE **CARL V. BUCK III**, ALJ:

STATEMENT OF THE CASE

Petitioner I.R. appeals the determinations by respondent Township of East Brunswick Board of Education (Board) that (1) I.R.'s daughter, J.R., violated the Board's harassment, intimidation, or bullying (HIB) policy when "she created and disseminated a meme regarding [N.C.'s] weight and appearance" and that (2) J.R.'s classmate, N.C., did not violate the Board's HIB policy when she fought J.R. For the reasons that follow, I conclude that the

Board's determination that N.C. did not commit a HIB act against J.R. should be affirmed, while the Board's determination that J.R. committed an act of HIB against N.C. should be reversed.

PROCEDURAL HISTORY

On August 3, 2018, the Board determined that J.R. committed an act of HIB against her classmate, N.C., on the basis of N.C.'s weight or appearance, but that N.C. did not commit a HIB act by starting a fight with J.R. in retaliation. Petitioner filed a timely petition of appeal with the Commissioner of Education, and upon receipt of an answer from the Board, the Commissioner, on December 5, 2018, transmitted the matter to the Office of Administrative Law (OAL) as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The matter was heard on January 31, 2020, and February 19, 2020. The record was closed after post-hearing submissions by the parties on July 11, 2022. Orders of extension of the deadline to file the initial decision were signed on August 16, 2022; October 6, 2022; November 23, 2022; January 9, 2023; April 10, 2023; May 15, 2023; and July 7, 2023. By these orders of extension, the deadline for filing the initial decision was extended to August 21, 2023.

FACTUAL DISCUSSION AND FINDINGS

The following facts are derived from the documentary evidence submitted by the parties to this matter, and **I FIND:**

This matter arises from separate HIB incident reports filed on May 21, 2018, by the fathers of two eighth-grade students at Churchill Junior High School in East Brunswick. In the first report, the father of N.C. alleged that his daughter "has been subject to name-calling and derogatory social media posts related to her weight and physical appearance." (R-2.) The alleged offender was N.C.'s classmate, J.R. Ibid. In the second report, J.R.'s father, I.R., who is the petitioner in this matter, alleged that his daughter had been the target of a

physical attack by N.C. on May 16, 2018, and that J.R. “has been ‘the victim of physical attacks by the members of the same group’ while at school. (R-3.)

As a result of the HIB allegations, an Anti-Bullying Specialist, Tiffany Papp, conducted an investigation and issued two separate written reports of her findings on May 31, 2018. (R-2; R-3.) As part of her investigation into the incidents, Ms. Papp interviewed several students, including J.R. and N.C. Ibid.

According to N.C., a group of students, including J.R., had been picking on her throughout the school year. (R-3.) One day, a member of that group, identified as “O2” in one of the HIB reports, posted “a picture of a fat sheep on Instagram. I was tagged in it. The caption said ‘Look’ with my name tagged to it. It was [O2’s Instagram] account.” Ibid. N.C. told Ms. Papp that, “It made me feel upset. I don’t know why they need to make me feel bad. [J.R.] had the picture before first period. She was holding it up and laughing in front of people in the hallway. I wanted to cry, but I didn’t. The bell rang, so I went to class. I usually see [J.R.] after period 2. That’s when I pushed her and she swung at me.” Ibid. In a statement about the incident, N.C. wrote, “They were bullying me and posting mean things about me and calling me fat and I had enough, so I hit [J.R.]” (R-2.)

In her written statement, J.R. wrote, “Walking to class and got thrown into a window by [N.C.] She threw punches and I hit her back in self-defense.” (R-3.) J.R. reported that she had had issues with N.C. and N.C.’s group of friends throughout the school year. Ibid. In her interview with Ms. Papp, J.R. explained that “Someone else posted something not nice [about [N.C.]] online. I’m friends with him . . . so she associated me with it [the online posting]. In school, her and her friends followed me to my class . . . [N.C.] hit me.” (R-2.) J.R. stated that she and N.C. “see each other in the halls all the time” and that when she saw N.C., “I would say fuck you and call her fat.” Ibid.

In his interview, O2 admitted that he posted the sheep meme and stated that, in doing so, “I guess I was calling her fat.” Ibid. He further stated that “[J.R.] had nothing to with it and then [N.C.] went up to her and hit her.” Ibid.

Another student who was interviewed and identified as “W1” stated that N.C. “told me that she got tagged in an Instagram post. It was a fat ram meaning that she was fat and it was O2 that posted it.” Ibid. According to W1, “[N.C.] told us before the fight in period 2 that she had enough and that she was going to fight [J.R.]” Ibid.

Another student who was interviewed, “W3,” “Before period 1, [J.R.] said something to [N.C.] [J.R.] also said something to [N.C.] right before she fought her and [N.C.] just got fed up and went for it. In the morning before the fight, [N.C.] said she didn’t know how to make it stop. She went to Guidance, she tried to approach [O2 and J.R.] That didn’t work. I also told O2 to stop. It just didn’t stop, so [N.C.] fought.” Ibid.

“W4,” another student witness who was interviewed, stated that “There’s been a lot of back and forth between [J.R.], O2, and [N.C.] . . . [N.C.] saw a picture online that was meant to be a fat blob. O2 posted it. It was meant to call [N.C.] fat. That over-did it . . . They would call her fat and all to her face. Then, when they put the ‘fat’ picture up she had enough.” Ibid. According to W4, “[J.R.] just doesn’t stop running her mouth about [N.C.] saying that she’s fat and a bitch. [N.C.] says it back to her. [N.C.] does get herself into drama, but [J.R.] really started this one with them going at each other.”

Finally, “W5” recounted that “[J.R.] takes O2’s side and whatever O2 does, [J.R.] does. So, [N.C.] went up to [J.R.] and said, ‘Why did you post that about me with O2?’ [J.R.] tried to hit her. [N.C.] tried to block her and then they fought.” Ibid.

After interviewing the students who were involved in or witnessed the incidents, Ms. Papp concluded that J.R. and the student who posted the picture of a sheep on his Instagram account committed HIB against N.C. (R-2.) Ms. Papp determined that that the incident involving the picture met the definition of HIB because the distinguishing characteristic motivating the incident was N.C.’s “weight/physical appearance;” “offender knew the action would physically or emotionally cause harm to the victim[;]” and the incident “insulted or

demeaned a student” and “created a hostile educational environment by severely or pervasively causing physical or emotional harm to the student.” (R-2.)

However, Ms. Papp concluded in a separate written report that N.C.’s physical attack on J.R. did not meet the definition of HIB because, although J.R. “was in fear of physical or emotional harm,” there was an absence of a distinguishing characteristic motivating the incident.” (R-3.) Instead, the incident was addressed under the school’s code of conduct. (R-4.)

Thereafter, J.R.’s parents met with school administrators about the HIB reports. (R-5.) J.R.’s parents wanted to know why school officials had determined that their daughter was not the victim of HIB and explained that the physical altercation with N.C. had a negative emotional and educational impact on J.R. Ibid. The school officials offered to provide J.R. with certain supports. Ibid.

By letter, dated June 18, 2018, an assistant superintendent, Louis Figueroa, notified J.R.’s parents that J.R. was found to have committed an act of HIB and the reasons therefor. R-8. Specifically, Dr. Figueroa summarized the HIB investigation findings as follows: J.R. “insulted or demeaned another student” and “offender upset the victim by her actions.” Ibid. And he listed the evidence as “offender electronically bullied the victim;” “actions caused emotional harm and interfered with the victim’s education;” and “offender bullied the victim by these actions.” Ibid.

However, in the letter, Dr. Figueroa mistakenly wrote that “This report is sent to you as a result of a comprehensive HIB investigation in which your child, Joseph was identified as an offender.” Ibid. J.R.’s first name is not Joseph.¹ Dr. Figueroa notified the parents of their right to a hearing before the Board. Ibid.

In response, J.R.’s parents requested a hearing before the Board, and on July 26, 2018, appeared before the Board to contest the findings that J.R. committed an act of HIB

¹ However, J.R.’s actual first name is written correctly in another section of the letter. Ibid.

against N.C. and that J.R. was not the victim of HIB as a result of the physical altercation with N.C. (R-10.)

By letter, dated August 3, 2018, the Board informed J.R.'s parents that "the Board determined to uphold the Superintendent's findings." Ibid. With respect to the fight, "the Board agreed with [Ms. Papp's] determination that the other student's conduct was not motivated by a perceived or actual characteristic; rather, the other student's conduct was a code of conduct violation and was in response to your daughter's dissemination of an inappropriate meme about the student. During [Ms. Papp's] investigation, your daughter admitted to showing the meme to other students in school." Ibid. As for the other incident, "the Board found that your daughter's conduct did meet the HIB criteria as she created and disseminated a meme regarding the other student's weight and appearance." Ibid.

The Board informed J.R.'s parents of their right of appeal to the Commissioner of Education. Ibid.

On October 30, 2018, I.R. did, in fact, file an appeal with the Commissioner and after the Board filed an answer, the Commissioner sent the matter to the OAL as a contested case.

A hearing was held on January 31, 2020, and February 19, 2020. At the hearing, Mark Sutor and Louis Figueroa testified for the Board, while I.R. testified on his own behalf. Ms. Papp, who was on maternity leave and unable to testify in person, provided written testimony on behalf of the Board.

Mark Sutor (Mr. Sutor), Principal of Churchill Junior High School, testified on behalf of the Board. Mr. Sutor testified that he reviews the report of the Anti-Bullying Specialist to determine if the findings meet the legal definition of HIB. These incidents first came to his attention when there was a fight in the school. N.C. hit or pushed J.R. and J.R. pushed back before the fight was broken up. He learned the fight was caused by a meme of a large sheep. The fight was originally handled as a code of conduct issue for which both students were disciplined, and then I.R. requested an HIB investigation into the matter. Mr. Sutor testified

that when N.C.'s parents were notified of the HIB investigation, they requested an HIB investigation into J.R.'s conduct. As part of his request, I.R. claimed that four girls in the school had a history of bullying J.R.

Mr. Sutor testified that Ms. Papp, the Student Assistance Counselor at a different school in the district, was assigned to complete the HIB investigation because I.R. asked for an independent HIB specialist. Ms. Papp conducted both investigations at issue here. She found that J.R. had made negative and demeaning comments toward N.C. over a period of several months that referred to her weight and appearance. Mr. Sutor testified that J.R. had done this along with other students, both in the hallways at school and online, and it was extremely upsetting to N.C. Ultimately, Ms. Papp found that J.R. had bullied N.C. Regarding N.C.'s misconduct, Mr. Sutor testified that Ms. Papp found that an altercation had occurred, but that N.C. did not commit an act of HIB against J.R. because no distinguishing characteristic was identified as the motivation for the altercation. Instead, Ms. Papp found that J.R.'s sharing of the meme was the reason for N.C.'s actions.

Mr. Sutor also testified that he met with I.R. on June 13, 2018, to discuss the findings. After this meeting, I.R. appealed the findings of the District to the Board, which held a hearing on July 26, 2018. At this meeting, the Board upheld the findings of the District regarding both HIB investigations. The Board agreed that there was no lasting impact on J.R.

When asked about J.R.'s grades declining at the end of the 2017-2018 school year and during the following school year, Mr. Sutor testified that it is normal for grades to change for students transitioning from middle school to high school. Mr. Sutor explained that transitioning from the elementary school model (2017-2018 school year) to the high school model (2018-2019 school year), as J.R. did, can result in a change in a student's grades, so that is not necessarily a result of a HIB incident.

Dr. Louis Figueroa, (Dr. Figueroa), Assistant Superintendent, District Anti-Bullying Coordinator, and County Anti-Bullying Bill of Rights Chairman, also testified on behalf of the Board. Dr. Figueroa testified that he reviews the HIB investigations from the Supervisor of

Student Services, who is Danielle Blalock. He then reviews them with the superintendent before they go to the Board. Dr. Figueroa explained that the anti-bullying specialist conducts the HIB investigations themselves and they undergo training to be able to do so. Dr. Figueroa testified that he also provides monthly updates to the supervisor of student services and the anti-bullying specialists in the District.

Dr. Figueroa testified that he reviewed both of the reports that are on appeal here and that he agreed with the findings in both cases. He makes sure that the findings are consistent with the law and that there are facts to back up the determinations that are made. He found that both of the findings in this matter were supported by sufficient evidence. Dr. Figueroa spoke to I.R. about the findings around the end of May or beginning of June, though he could not recall the exact date. He testified that they spoke about I.R.'s concerns regarding the accuracy and the questions that were asked by the anti-bullying specialist. He testified about a meeting with I.R. and his wife on June 13, 2018, which also included Danielle Blalock and Mr. Sutor. Dr. Figueroa testified that he always meets with parents when they ask to discuss HIB findings. Dr. Figueroa also explained that he sent a follow up letter after the meeting, which was followed by I.R.'s request to be heard by the Board, received around June 25, 2018.

Dr. Figueroa testified that the Board heard this matter on July 26, 2018, a date requested by I.R. During this hearing, I.R. was able to speak to the Board and the Board questioned Dr. Figueroa, Mr. Sutor, and Ms. Blalock. He testified that the Board voted to accept the recommendations of the District on both HIB investigations. The Board agreed with the findings against J.R. because there was an actual or perceived characteristic (weight or appearance) that motivated J.R. and the evidence showed that J.R. knew her actions would physically or emotionally harm N.C., that it insulted or demeaned N.C., and that it created a hostile educational environment.

Tiffany Papp (Ms. Papp) Student Assistance Specialist and Anti-Bullying Specialist, was unavailable to testify for the Board due to being on leave, so written testimony was provided. Direct and cross-examinations with written answers were both admitted into

evidence. At the time of the investigation in May 2018, Ms. Papp was employed at the Hammarskjold Middle School but was asked to conduct the HIB investigations at issue here as an independent party. She is trained to complete HIB investigations.

The first reported incident which Ms. Papp investigated, as stated in the Anti-Bullying Specialist Reporting Form was “the parent of the alleged target [N.C.], reports that [N.C.] has been subject to name-calling and derogatory social media posts related to her weight and physical appearance.” Ms. Papp’s investigation included reviewing written statements from the students involved and interviewing witnesses. At the conclusion of this investigation, Ms. Papp found J.R.’s conduct met the definition of HIB due to an actual or perceived characteristic that motivated the incident and because of the effects of the behavior on N.C. Therefore, a finding of HIB was made against J.R.

The second reported incident which Ms. Papp investigated, as stated in the Anti-Bullying Specialist Reporting Form, “the parent of the alleged target, [I.R.], requested an HIB investigation following a physical incident on May 16, 2018. [I.R.] states that his daughter, [J.R.], has been “the victim of physical attacks by members of the same group while in the Churchill Junior High School building.” Ms. Papp’s investigation included reviewing written statements from the students involved and interviewing witnesses. Ms. Papp also reviewed video footage of the incident. At the conclusion of the investigation, Ms. Papp found this to be an unconfirmed incident of HIB because there was no actual or perceived characteristic that motivated the incident.

Ms. Papp noted that although J.R. informed her of past issues with N.C., the other students interviewed did not. Ms. Papp also noted that all four of the students requested by I.R. were investigated as part of the second incident with J.R. as the alleged victim. Additionally, since the two incidents were related, most students were only interviewed once for both investigations. While J.R. was not found to have created the meme of N.C., she was found to have disseminated it in school. J.R. was also found to be involved in making verbal comments regarding N.C.’s weight and appearance.

I.R. testified for himself and his daughter. According to I.R., J.R.'s grades declined after the fight with N.C. I.R. testified that J.R. lost trust in school authorities and actively avoided interactions with the school administration. J.R. also attended therapy for months after the incident. I.R. noted that the letter from Dr. Figueroa named a different student as the offender, rather than J.R., and that the Board incorrectly wrote in its decision that J.R. admitted to sharing the meme and that she "created and disseminated" the meme. I.R. felt that this was a reason to reverse the findings in the investigation against J.R. I.R. also testified that there were no independent witnesses interviewed during the investigation because all of them were either members of J.R.'s friend group, or N.C.'s friend group.

I.R. testified that since the letter containing the findings from Dr. Figueroa contained errors (the wrong name) and directly contradicts the findings of the District's own investigation by Ms. Papp, who did not interview any independent witnesses, the finding against J.R. should be reversed. Regarding the investigation against N.C., I.R. testified that the distinguishing characteristic is that J.R. left the friend group, or "exclusion." Additionally, I.R. testified that his initial HIB investigation request included other students and not just N.C.

Each one of the witnesses testified in a manner that was forthright, direct, and thorough; as such, I found their testimony to be credible.

In April 2020, the parties submitted post-hearing briefs on their respective positions. I.R. maintains that the Board's determinations must be reversed due to certain procedural deficiencies of the HIB investigations and because the evidence does not support the Board's determinations. I.R. contends that he and his daughter were denied due process because the school misidentified J.R. as "Joseph" when informing I.R. and his wife that J.R. had committed an act of HIB, the Board incorrectly concluded that J.R. not only disseminated the meme but also "created" it, there was no proof that J.R. actually shared the meme, no proof of emotional harm to N.C., and Ms. Papp did not interview "independent" witnesses. I.R. also argues that his daughter was the victim of bullying because the distinguishing characteristic motivating N.C.'s instigation of the fight with J.R. was that "J.R. was singled out by the group

of students and cast as an outsider and a pariah after she stop[ped] being a friend with that group[.]” I.R. also states that J.R. suffered emotionally and academically after the incident.

The Board maintains that its determinations should be affirmed because (1) “[t]he Board acted reasonably in determining that J.R. violated the HIB policy by repeatedly calling [N.C.] ‘fat,’ a ‘fat pig,’ and a ‘fat toddler’ multiple times a day for several months;” (2) “the Board acted reasonably in determining that J.R. was not a HIB victim because actions taken against J.R. were not motivated by a distinguishing characteristic;” and (3) “the Board’s determinations must be upheld because the record clearly supported the Board’s HIB determinations and there were no material procedural errors.”

First, with respect to the HIB finding against J.R., the Board notes that J.R. and N.C. had an ongoing feud, that “J.R. specifically admitted to previously calling N.C. a ‘fat toddler’ and further admitted to calling N.C. ‘fat’”, and that “N.C. would often run to the bathroom and cry.” The Board also notes that:

J.R. did not specifically deny she disseminated the meme portraying N.C. as a ‘fat sheep’; she only denied creating the same. However, N.C. stated that J.R. was showing the meme prior to first period and N.C.’s friends supported her account by stating that J.R. somehow instigated N.C. the morning of the fight. Given this, it was reasonable for the ABS and the Board to find that J.R. disseminated the meme portraying N.C. as a ‘fat sheep.’

Second, the Board argues that N.C. did not bully J.R. by fighting her because the fight was not motivated by a distinguishing characteristic. Instead, the fight “arose from a dispute between two feuding parties.” Moreover, even if the fight had been the result of J.R.’s exclusion from a former group of friends, the Board maintains that “a dispute between students purely arising from an underlying conflict ‘such as a relationship falling apart between former friends’ is not HIB.” And to the extent that I.R. alleges that N.C. attacked J.R. because J.R. is “small,” there is no evidence to support this allegation.

Finally, the Board posits the following:

[I.R.] also argues that the Board's decision to affirm [the finding the J.R. bullied N.C.] should be reversed because its written decision included the following two incorrect statements: (1) J.R. created the 'fat sheep' meme and (2) J.R. admitted to showing around the 'fat sheep' meme. However, these errors were . . . de minimis because the Board fulfilled its procedural mandate to release a written decision affirming, rejecting, or otherwise modifying the factfinder's decision. Although the basis provided by the Board may certainly guide the Commissioner's analysis, reversal of a Board decision is inappropriate 'where the record is sufficient for a fact finder to determine whether an act of HIB occurred.'

LEGAL ANALYSIS AND CONCLUSIONS

The Anti-Bullying Act is designed "to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises."² N.J.S.A. 18A:37-13.1(f). Under the act, HIB is defined as:

[A]ny gesture, any written, verbal or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic, that takes place on school property, at any school-sponsored function, on a school bus, or off school grounds as provided for in section 16 of P.L.2010, c.122 (C.18A:37-15.3), that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that:

a. a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student's property, or

² The act was recently amended to add several other procedural requirements regarding HIB investigations. L. 2021, c. 338. However, the amendments became effective in 2022, and the Board's and school staff's actions must be assessed in light of the Anti-Bullying Act's requirements as they existed in 2018.

placing a student in reasonable fear of physical or emotional harm to his person or damage to his property;

b. has the effect of insulting or demeaning any student or group of students; or

c. creates a hostile educational environment for the student by interfering with a student's education or by severely or pervasively causing physical or emotional harm to the student.

[N.J.S.A. 18A:37-14.]

As the Commissioner has explained, under this provision, N.J.S.A. 18A:37-14, “a finding of HIB requires three elements”:

First, the conduct must be reasonably perceived as motivated by any actual or perceived enumerated characteristic or other distinguishing characteristic and, second, the conduct must substantially disrupt or interfere with the rights of other students or the orderly operation of the school. The third condition is that one of the three criteria enumerated in the Act regarding the effect of the conduct must also be satisfied.

[Wehbeh v. Bd. of Educ. of the Twp. of Verona, 2020 N.J. AGEN LEXIS 50, **7-8.]

Each school district must adopt a policy that prohibits HIB and provides for a prompt response to any alleged HIB incident. N.J.S.A. 18A:37-15. Once an alleged HIB incident is reported to the school principal, the principal must initiate an investigation within one school day of the report. N.J.S.A. 18A:37-15(b)(6). The investigation shall be conducted by a school anti-bullying specialist, but “the principal may appoint additional personnel who are not school anti-bullying specialists to assist in the investigation.” Ibid. The investigation shall be completed within ten days of the initial HIB complaint. Ibid.

The results of the investigation shall then be quickly reported to the superintendent of schools, who may take certain remedial action. Ibid. The results shall also be reported to the board of education “no later than the date of the board of education meeting next following the completion of the investigation, along with information on any services

provided, training established, discipline imposed, or other action taken or recommended by the superintendent.” Ibid.

The parents of the students involved in any alleged HIB incident are entitled to receive information about the nature of the investigation and the results of the investigation. Ibid. The parents may request a hearing before the board, and the hearing must be held within ten days of the request. Ibid. Any hearing shall be held in executive session to protect the identity of any students involved. Ibid. The board may hear from the anti-bullying specialist about the incident, recommendations for discipline or services, and any programs instituted to reduce such incidents. Ibid.

A school board must issue a written decision at the first meeting after its receipt of the investigation report. Ibid. The board may affirm, reject, or modify the superintendent’s decision. Ibid. The board’s decision may be appealed to the Commissioner of Education. Ibid.

An action by a board of education “is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable.” Thomas v. Morris Twp. Bd. of Educ., 89 N.J. Super. 327, 332 (App. Div. 1965). In other words, “action of the local board which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives.” Kopera v. Bd. of Educ. of the Town of W. Orange, 60 N.J. Super. 288, 294 (App. Div. 1960). Indeed, “the scope of the Commissioner’s review is . . . not to substitute his judgment for that of those who made the evaluation but to determine whether they had a reasonable basis for their conclusions.” Id. at 298. Thus, in order to prevail, those challenging a HIB decision made by a board of education “must demonstrate that the Board acted in bad faith, or in utter disregard of the circumstances before it.” G.H. & E.H. ex rel. K.H. v. Bd. of Educ. of the Bor. of Franklin Lakes, EDU 13204-13, Initial Decision (February 24, 2014) (citation omitted), adopted, Comm’r (April 10, 2014) <<http://njlaw.rutgers.edu/collections/oal/>>.

I. The Board's determination that J.R. committed an act of HIB as detailed in its written decision is without a rational basis and must be reversed.

First, I am constrained to **CONCLUDE** that the Board's written decision that J.R. committed HIB against N.C. lacks a reasonable basis and cannot stand.

As prologue, it is clear from the exhibits that J.R. and N.C. had a contentious relationship prior to their physical fight on May 16, 2018. It is equally clear that, while the conflict was mutual, J.R. crossed the line on several occasions, including her admission that in the midst of their ongoing feud, she and N.C. would "see each other in the halls all the time" and that when she saw N.C., "I would say fuck you and call her fat." Calling N.C. "fat" – an actual or perceived distinguishing characteristic – understandably upset N.C. and interfered with her right to be "left alone" at school and these circumstances would meet the statutory definition of HIB. However, this misconduct by J.R. was not the stated basis for the Board's determination that J.R. committed HIB against N.C.

The Anti-Bullying Act provides that "the board shall issue a decision, in writing, to affirm, reject, or modify the superintendent's decision" and "[t]he board's decision may be appealed to the Commissioner of Education[.]" N.J.S.A. 18A:37-15(b)(6)(e). Here, Dr. Figueroa, the Assistant Superintendent, wrote a letter to J.R.'s parents in which he specifically informed them that J.R. committed an act of HIB against another student because she "electronically bullied the victim." The inference here is that J.R. "electronically bullied" N.C. by showing the sheep meme to others on J.R.'s smartphone. And there is no mention in the letter of a finding that J.R. bullied N.C. by calling her "fat."

Then, in the written decision issued by the Board to J.R.'s parents on August 3, 2018, the Board stated that it had "reviewed" the HIB reports issued by Ms. Papp, the Anti-Bullying Specialist, that "[d]uring the ABS' investigation, your daughter *admitted* to showing the meme to other students in school," and that "the Board found that your daughter's conduct did meet the HIB criteria as she *created* and *disseminated* a meme regarding the other student's

weight and appearance.”³ (Emphasis added). J.R.’s involvement with the sheep meme is the sole stated basis for the Board’s determination that J.R. committed HIB against N.C. And this written decision by the Board (including the determination that J.R. was not the victim of HIB) was what I.R., as was his right under the HIB statute, appealed to the Commissioner.

The problem with the Board’s written decision is that the stated basis for the Board’s determination that J.R. committed HIB against N.C. does not align with the evidence in the record. First, at no point during her interview did J.R. admit that she showed the meme to other students.⁴ If she had admitted to this, the Board would undoubtedly have reason to conclude that such misconduct, and its effect on the victim, constituted HIB. Yet the Board mistakenly relied on J.R.’s “admission” to conclude that J.R. committed HIB by sharing the hurtful meme with others. The Board compounded its error by stating that J.R. “created” the meme, another misstatement of the facts, as another student admitted to creating the meme without J.R. Finally, and contrary to the Board’s leading argument in its post-hearing brief, nowhere in the Board’s written decision did that body specifically “determine[] that J.R. violated the HIB policy by repeatedly calling [N.C.] ‘fat,’ a ‘fat pig,’ and a ‘fat toddler’ multiple times a day for several months.” Instead, the Board’s stated reason for finding that J.R. committed an act of HIB against N.C. was that J.R. “created and disseminated a meme regarding the other student’s weight and appearance.”

It is clear from the evidence that J.R. did not create the meme. It is not clear whether, without J.R.’s “admission” that she shared the meme, the Board would have concluded that she did. While N.C. stated in her interview that she saw J.R. showing the meme to other students, none of the other students who were interviewed by Ms. Papp mentioned anything about this happening. Instead, the student who actually created and posted the hurtful meme

³ In her report on the HIB investigation against J.R. (R-2), Ms. Papp does not specifically state the basis for her HIB finding. The report is written on what appears to be a standard form that is used for all HIB incidents. In the report, she merely recites in a “Factual Findings” section the numerous statements by the accused, the accuser, and witnesses, and then in the section, “Distinguishing Characteristic Motivating the Incident,” puts an “X” next to “OTHER actual or perceived characteristic (identify):” and writes “Weight/Physical appearance” as the distinguishing characteristic,” and places “X’s” next to the applicable categories in the section “Effect of HIB (check all that apply).”

⁴ In fact, it appears from a review of the HIB reports that J.R. was never even asked by Ms. Papp whether she shared the meme and laughed about it with other students.

stated that “[J.R.] had nothing to with it and then [N.C.] went up to her and hit her;” another student recalled that “Before period 1, [J.R.] *said something* to [N.C.] [J.R.] also said something to [N.C.] right before she fought her and [N.C.] just got fed up and went for it” (emphasis added); another student said that “*when they put the ‘fat’ picture up* [N.C.] had enough” (emphasis added); and finally, another student offered that “So, [N.C.] went up to [J.R.] and said, ‘Why did you post that about me with O2?’ [J.R.] tried to hit her.” These witness accounts at least suggest a different impetus for the fight – not that J.R. “shared” the meme, but that N.C. thought she had something to do with creating and posting the meme.

What is known is that the Board erroneously found that J.R. admitted to sharing the meme, and this supposed admission by J.R., not N.C.’s allegation, was the specific finding made by the Board in its written decision and the presumptive basis for the Board’s conclusion that J.R. “disseminated” the meme.

While the Board argues that “these errors were . . . de minimis because the Board fulfilled its procedural mandate to release a written decision affirming, rejecting, or otherwise modifying the factfinder’s decision,” these errors were not “de minimis,” but substantive, and cause for reversing the Board’s determination that J.R. committed HIB against N.C. The HIB statute does not specify the level of detail required in a school board’s written decision “to affirm, reject, or modify the superintendent’s decision.” Perhaps it would be sufficient for a school board to simply write that “we affirm,” or “we reject,” or “we modify” the superintendent’s decision, and leave it at that. However, here, the Board detailed the findings undergirding its decision and, unfortunately, the stated reasons do not support the Board’s conclusion.

I.R. appealed the Board’s written decision that J.R. committed HIB because she “admitted” to sharing the sheep meme with others, and that she “created and disseminated the meme;” the written decision that I.R. appealed included no mention or finding regarding instances in which J.R. called N.C. “fat” or some variation thereof. And while a school board’s decision is entitled to a presumption of correctness, there is nothing correct about the Board’s determination that J.R. committed HIB by “creating” and “admitting” to “disseminating” the

sheep meme. As such, I **CONCLUDE** that the Board's decision that J.R. committed HIB against N.C. must be **REVERSED**.

II. The Board's determination that N.C. did not commit an act of HIB against J.R. must be affirmed.

Second, I **CONCLUDE** that the Board's determination that N.C. did not commit an act of HIB when she physically attacked J.R. because N.C.'s actions were not "reasonably perceived as being motivated either by any actual or perceived characteristic," as required under N.J.S.A. 18A:37-14. Whether N.C. fought J.R. because she thought J.R. shared the meme or because, as N.C. wrote in a statement about the incident, J.R. and her group of friends were "bullying me and posting mean things about me and calling me fat and I had enough, so I hit [J.R.]," the Board reasonably concluded that N.C. did not fight J.R. because of "any actual or perceived characteristic" of J.R.

Contrary to I.R.'s argument, and consistent with the Board's argument, "exclusion" from a group or a "falling out" between friends is not a distinguishing characteristic that is protected under the HIB statute. And, as the Board also argues, there is no support for I.R.'s assertion that N.C. attacked J.R. because J.R. is "small." None of the students interviewed by Ms. Papp, including J.R., mentioned J.R.'s physical stature as a possible factor that motivated N.C.'s actions.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that (1) the Board's determination that J.R. committed an act of HIB against N.C. is **REVERSED** while (2) the Board's determination that N.C. did not commit a HIB act against J.R. is **AFFIRMED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



August 18, 2023

DATE

CARL V. BUCK III, ALJ

Date Received at Agency:

Date Mailed to Parties:

CVB/tat

APPENDIX

WITNESSES

For Petitioner:

I.R.

For Respondent:

Mark Sutor, Principal of Churchill Junior High School

Dr. Louis Figueroa, Assistant Superintendent and District Anti-Bullying Coordinator

EXHIBITS

For Petitioner:

P-1 J.R.'s Hammarskjold Grades

P-2 J.R.'s Churchill Grades

For Respondent:

R-1 Initial Memorandum, dated May 12, 2018

R-2 Reporting Form of N.C., dated May 16, 2018

R-3 Reporting Form of J.R.'s parent

R-4 Informal Reporting Form

R-5 Principal Summary Report for HIB 23

R-6 Principal Summary Report for HIB 24

R-7 Summary Letter regarding June 13, 2018 Meeting

R-8 Dr. Figueroa's Letter, dated June 18, 2018

R-9 Ms. R's Letter to the Board, dated July 25, 2018

R-10 Determination Letter

R-11 Certification of Completion

R-12 Olweus Certification of Completion

R-13A Direct Examination Questions of Tiffany Papp

R-13B Cross-Examination of Tiffany Papp by I.R.